

BOARD OF AGRICULTURE, TRADE AND CONSUMER PROTECTION MINUTES

August 14, 2012

The Board of Agriculture, Trade and Consumer Protection met on August 12, 2012 at the Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, Madison, WI. The meeting was preceded by public notice as required by s. 19.84, Stats.

Call to Order

Board Chair Andy Diercks called the meeting to order at 9:02 a.m.

Members Present

Miranda Leis, Mark Schleitwiler, Richard Cates, Andy Diercks, Michael Dummer, Margaret Krome, Enrique Figueroa and John Koepke. Pam Garvey was absent.

Minutes

Motion

Enrique Figueroa made a motion to approve the June 14, 2012 Board minutes. Second by John Koepke. Motion approved unanimously.

Note: John Koepke noted the misspelling of “Ashippun” on page 1 of the June 14 minutes.

Public Appearances

Jim VandenBrook, Executive Director, Wisconsin Land and Water Conservation Association, Madison, spoke to the Board on the role of Land Conservation Departments during the drought. The corn crop and grazing lands in Southern Wisconsin are in tough shape. Counties will work with farmers to make changes to nutrient management and conservation plans, due to early chopping of corn. Some counties are offering land for growing hay or grazing, holding meetings to discuss crop insurance, and working with growers to cost-share cover-crops.

Dr. Richard VanDomelen, Ridgland Farms, Inc., Mt. Horeb, expressed his concerns regarding ATPC 16 (dog sellers and facility operators). Ridgland Farms is USDA licensed as a breeder of purpose-bred beagles for research and as a research facility. Dr. VanDomelen asked for an exemption from ATPC 16 related to the requirement of kennel sizes and heights; which he claimed far exceed federal requirements under the USDA-Animal Welfare Act (AWA). Any expansion of the facility will cost twice as much if built in compliance with ATPC 16 versus building in compliance with AWA and creating two different sets of standards of housing animals within the same business will cause confusion. Dr. VanDomelen expressed concerns with privacy issues from a research facility standpoint in which inspection reports, including the

names of individuals and companies doing business with Ridgman Farms, would be available under state open records law.

Livestock Premises Registration; Ch. ATCP 17 (Final Draft Rule)

Dr. Bob Ehlenfeldt, State Veterinarian, asked the Board to approve a final draft rule amending ch. ATCP 17 relating to livestock premises registration. Under current law, a person keeping livestock in Wisconsin must register each location where the livestock are kept with the department.

The proposed rule changes the expiration date of all registrations from December 31 to July 31, every three years. This change in date will begin in 2013 and will expedite the renewal process by having DATCP incur the cost of processing renewals during a time of year when temporary employees are more readily available. The proposed rule will also create a limited exemption for individuals who are members of recognized religious groups that have a sincerely held religious belief opposing certain existing livestock premises requirements.

DATCP held two public meetings on this rule. A total of five people attended the hearing and eight people submitted written comments. Of those, three opposed the rule and would like premises registration to be voluntary, two opposed the rule for unclear reasons, 8 people did not specify their position on the rule, but stated concerns associated with religious beliefs and exemptions and the change of date for registration.

Motion

Margaret Krome made a motion to approve the final draft rule. Second by Mike Dummer. Motion approved unanimously.

Pesticide Use and Control, Ch. ATCP 29 (Final Draft Rule)

Mike Murray and Jennifer Heaton, Agricultural Resource Management Division, asked the Board to approve a final draft rule amending ch. ATCP 29, related to pesticide use and control. DATCP regulates the sale and use of pesticides in the state.

This rule proposes to:

- Repeal the provision that veterinarians and veterinary technicians who use pesticides for animal treatment be required to obtain individual commercial applicator licenses.
- Modifies an existing pesticide applicator certification category to include pesticide applications to natural areas.
- Allows regulated persons to give certain notices and submit certain permit applications by electronic transmission to customers, if customers choose to receive important pesticide safety information in that way.

- Updates current rules related to structural pesticide applications, including rules related to perimeter barrier applications and application notices.
- Harmonizes current rules with existing rules related to fertilizer and pesticide bulk storage.
- Updates current rules related to non-agricultural chemigation systems.
- Creates labeling requirements for rodenticide bait stations that are set out by commercial applicators.
- Modernizes the rules related to spill containment and spill containment surfaces.
- Removes obsolete pesticide license fee provisions to avoid confusion when reading the rule.
- Amends the administrative rule note regarding worker protection provisions by removing the summary of federal requirements in anticipation of a change to federal worker protection standards.
- Makes a number of minor drafting changes designed to update, clarify and correct current rules.

DATCP held two public hearings on this rule. A total of 30 people attended the hearings. Of those, 27 submitted registration cards and 12 provided oral testimony. An additional 18 people submitted written comments. Comments related to including natural areas in an existing pesticide certification category, the labeling of bait stations, electronic notifications, and the perimeter barrier and spill containment proposals.

Motion

Mike Dummer made a motion to approve the final draft rule. Second by Margaret Krome. Motion approved unanimously.

Food Processing Plants, Ch. ATCP 70 (Hearing Draft Rule)

Steve Ingham, Division of Food Safety Administrator, asked the Board to authorize public hearings on a proposed rule to amend ch. ATCP 70 relating Food Processing Plants to adopt portions of the National Shellfish Sanitation Program (NSSP) Guide that will allow Wisconsin food processing plants to process and ship molluscan shellfish in interstate commerce.

Under current rules, food processing plants in Wisconsin that perform fish processing may receive and process molluscan shellfish from another state for final sale only within Wisconsin. The proposed rule will establish a program that would allow Wisconsin food processing plants, that choose to participate in the program, to process and repack molluscan shellfish for sale in other states and internationally.

Motion

Mike Dummer made a motion to authorize public hearings on the proposed rule. Second by Miranda Leis. Enrique Figueroa abstained. Motion approved.

**Telephone Solicitations; No-Call and No-Text List, Ch. ATCP 127
(Hearing Draft Rule)**

Michelle Reinen, Trade and Consumer Protection Division, asked the Board to authorize public hearings on a proposed rule related to ch. ATCP 127, telephone solicitations and the no-call and no-text list. This rule implements 2011 Wisconsin Act 197, which modified the Wisconsin no-call program to include commercial text messages and prohibit the practice known as “spoofing.”

The Wisconsin no-call program was established by statute in 2001, and was implemented by rule in 2002 by DATCP. Telephone solicitors are prohibited from calling residential customers on the state no-call list. There are exceptions for calls made to current clients and for calls made on behalf of non-profit and political organizations. Solicitors are required to register with DATCP and pay an annual or quarterly fee to solicit residential customers located in Wisconsin. Residential customers who do not want to receive unsolicited commercial calls must provide their telephone number and zip code to DATCP every two years.

This rule proposes the following:

- Defines “caller identification information” and “caller identification service.”
- Prohibits telephone solicitors from transmitting misleading or inaccurate caller identification information.
- For purposes of the no-call list, clarifies that the definition of “telephone solicitation” includes text messages and creates a definition of “text message.”

Motion

Miranda Leis made a motion to authorize public hearings on the proposed rule. Second by Mark Schleitwiler. Motion approved unanimously.

**Home Improvement Practices and Basement Waterproofing Practices, chs. ATCP 110 and
111
(Scope Statement)**

Michelle Reinen, Trade and Consumer Protection Division, asked the Board to approve a Scope Statement related to ch. ATCP 110 and ch. ATCP 11, home improvement practices and basement waterproofing practices.

The proposed rule will update ch. ATCP 110 to reflect current practices of the building industry. Specifically, the rule will define a design-build project and, as appropriate, regulate a design-build project differently than other home improvement projects. The rule will repeal ch. ATCP 111 and modify ch. ATCP 110 to incorporate the provisions in the existing ch. ATCP 111 with technical modifications.

Motion

Mike Dummer made a motion to approve the scope statement. Second by Enrique Figueroa. Motion approved unanimously.

Mobile Home Parks, ch. ATCP 125 (Scope Statement)

Michelle Reinen, Trade and Consumer Protection Division, asked the Board to approve a Scope Statement related to ch. ATCP 125, mobile home parks. The proposed amendments would update and modernize current rule to make it more compatible with current industry practices and to align it with other laws and rules that regulate manufactured housing.

The department will also explore whether provisions of the rule deter or prohibit lenders from making loans to mobile home park operators and examine the current rule limits of security deposits to 3 months' rent or \$350, whichever is less. The \$350 limit dates back to 1987. DATCP proposes to consider updating the limit to reflect inflationary changes. Additionally, the current rule's provisions relating to tie-in sales may need revisions to correspond to current practices.

Motion

Dick Cates made a motion to approve the scope statement. Second by Enrique Figueroa. Motion approved unanimously.

Residential Rental Practices, ch. ATCP 134 (Scope Statement)

Michelle Reinen, Trade and Consumer Protection Division, asked the Board to approve a scope statement relating to ch. ATCP 134, residential rental practices. The proposed amendments would resolve overlaps and conflicts between the existing rule and ch. 704, Stats.

DATCP proposes only limited changes to the rule as necessary to resolve conflicts with recently revised ch. 704, Stats. For example, ch. ATCP 134 specifies check-in procedures and disclosures of pre-existing damages with new tenants. It also regulates the process landlords must use to return security deposits that might be withheld. However, ch. ATCP 704, Stats. has incorporated very similar, yet not identical provisions.

Motion

Margaret Krome made a motion to approve the Scope Statement. Second by John Koepke. Motion approved unanimously.

Wisconsin Agricultural Statistic Service (Report)

Bob Battaglia, State Statistician updated the board on the following:

- Wisconsin farmers received an average price of \$17.10 per hundredweight for milk in June 2012, down \$3.50 from June 2011.
- Cheese production is up 2% from last year. California cheese production is down 7%.
- 2011 Farm Expenditure Survey Results:
 - Total farm production expenditures totaled \$9.6 billion, compared with \$8.6 billion in 2010.
 - Expenditures for tractors and self-propelled farm machinery increased 77% from \$300 million in 2010 to \$530 million.
 - Expenditures for trucks and automobiles increased 50% from \$90 million in 2010 to \$135 million.
 - Expenditures for feed increased 33% from \$1.33 million in 2010 to \$1.77 million.
 - Expenditures for other farm machinery increased 27% from \$200 million in 2010 to \$280 million.
 - Expenditures per Wisconsin farm averaged \$124,286, compared with \$109,615 in 2010.
- Prices for corn, soybeans, oats and milk are expected to increase from June to July. Alfalfa hay and other hay types are expected to remain level.
- The first crop forecast is due to be released Friday. Southern Wisconsin suffered severe drought conditions.
- Pending surveys within WASS include:
 - Use of Whey
 - Winery (survey for grape growers and wine makers)
 - Export Assistance
- Reorganization within WASS – federal staff will relocate to Iowa at the end of 2013 and state employees will remain at the department. Battaglia was offered a position in Washington, D.C. and will make a decision by the end of the year.

Emerald Ash Borer (Report)

Brian Kuhn, Agricultural Resource Management Division, provided the Board an update related to the Emerald Ash Borer (EAB). The Emerald Ash Borer is an injurious exotic pest that now endangers Wisconsin's 750 million ash trees and ash tree resources. Kuhn also updated the Board on the following information:

- Quarantined counties – There are currently 14 counties under state quarantine, which prevents the movement of all hardwood species of firewood, and nursery stock, green lumber and other material living, dead, cut or fallen out of the contiguous quarantined areas.
- Surrounding States with EAB – Illinois, Indiana, Iowa, Minnesota and Michigan have infested areas in which state and federal quarantines have been placed.

- Federal quarantine policy change - as of July 1, USDA –APHIS has changed their implementation of the federal EAB quarantine. The policy change allows for the free interstate movement of EAB regulated items within contiguously quarantined areas. Due to concerns with this policy change Wisconsin is still requiring companies from EAB infested states to obtain a state compliance agreement prior to the movement of regulated items into Wisconsin.
- EAB survey - In 2012, DATCP staff have set approximately 1,650 traps mostly in the northwest. Traps are currently being taken down in the southern part of the state. APHIS is also trapping in the very northwest part of the state.

Request for Rescission of ATCP 16 – Dog Sellers and Dog Facility Operators and Animal Health Update

Dr. Bob Ehlenfeldt, State Veterinarian, asked the Board to rescind the scope statement related to ch. ATCP 16, dog sellers and dog facility operators. This scope statement was approved by the Board on May 16, 2012.

After meeting with the advisory committee and department staff, it was determined no significant changes needed to be made within the rule. There was public comment related to a “grandfathering” provision of the rule about kennel sizes. Dr. Ehlenfeldt reminded the board of the discussion concerning kennel sizes and the length of the debate at the time the rule was initially approved. He also reminded the board that the USDA standards were established in 1966 and were overdue for updating. The issue related to selling dogs from research facilities internationally had been dealt with through a waiver provision.

Motion

Margaret Krome made a motion to rescind the scope statement related to ch. ATCP 16, dog sellers and dog facility operators. Second by Mike Dummer. Motion approved unanimously.

Animal Health Update

Dr. Ehlenfeldt provided the Board a brief update on the following issues:

- H3N2v is a common influenza strain in swine. Indiana and Ohio county fairs have been experiencing outbreaks in both swine and humans. The transmission of this virus has been primarily limited to humans with extensive contact with swine.
- Equine Influenza – At Wisconsin State Fair, 5 of 13 horses in the draft horse barn tested positive for equine influenza. Horses were released with recommendations of isolation.
- Reorganization of United States Department of Agriculture- Animal Plant Health Inspection Services - The current structures of the East and West regions are being eliminated. The import and export offices and ports may be regionalized.

Board Resolution Regarding the Purchase of Agricultural Conservation Easement Program

Motion

Richard Cates made a motion to approve the attached resolution in support of the Purchase of Agricultural Conservation Easement Program and urging the legislature to identify appropriate funding and staff support for the program. Second by Margaret Krome. Motion approved unanimously.

Introduction of the 65th Alice in Dairy Land (Report)

Rochelle Ripp, a 2009 graduate of the University of Wisconsin-Platteville with an agribusiness degree in communications, is serving as the 65th Alice in Dairyland. Rochelle grew up in Lodi on her family's dairy and cash crop farm and was involved in 4-H.

Alice spoke to the Board on the following topics:

- The mission to support agricultural business by educating the general public about the vital role agriculture plays in the economy, environment and quality of life in Wisconsin.
- Industry trainings and campaigns planned for the year.
- Encouraging the use of ethanol – Alice is driving an E-85 flex-fuel Chevrolet Tahoe, made possible through a partnership with the Wisconsin Corn Promotion Board.
- The continuing partnerships with the Kettle Moraine Mink Breeders and Wisconsin Jewelers Association. The Wisconsin Potato and Vegetable Growers is a new partner to the Alice program.
- Key messages delivered throughout the year, reflecting the goals and work plans of the Department.
- The 66th Alice in Dairyland Finals will be held in Calumet County, May 8-10, 2013.

Agricultural Enterprise Areas Designated in 2012 (Report)

John Petty, Agricultural Resource Management Division Administrator, updated the Board on the Agricultural Enterprise Areas (AEA) designated in 2012. AEA's are part of Wisconsin's Working Lands Initiative. An AEA is an area where the local community has prioritized preservation of farmland and agricultural development.

The department recently signed five new AEAs and expanded the boundaries for two existing AEAs, resulting in the preservation of just over 170,000 acres. Nearly 330 landowners signed the petitions and 28 towns and 7 counties passed resolutions in support of the petitions submitted for consideration during the 2012 petition cycle.

After three AEA cycles, the department designated 22 AEAs totaling 510,000 acres. The AEAs are located in portions of 17 counties and 55 towns. The 2012 designated areas include:

- Antigo Flats AEA, modified, (Langlade and Marathon Counties), 11,826 acres.
- Elba-Portland AEA (Dodge County) with 38,580 acres.
- Halfway Creek Prairie AEA (La Crosse County), 1,647 acres.
- Heart of America's Dairyland AEA, modified, (Clark and Marathon Counties) – 36,999 acres.
- Pecatonica AEA (Lafayette County), 45,776 acres.
- Shield-Emmet AEA (Dodge County) 16,051 acres.

Board Member Matters

Mark Schleitwiler: Work on the new plant on BelGiosio Cheese is progressing well and is expected to be completed and in operation in mid-December. Milk supplies held up well and are being processed at lower than anticipated yields, due in part to the summer heat. The lactose plant expansion at BelGiosio Cheese is near completion. Crops in north-eastern Wisconsin are average and milk prices are expected to increase.

Margaret Krome: The Farm Bill has been approved by the Senate, but faces an impasse in the House; it has been passed by committee but has yet to be sent to the floor, and House leadership is resisting doing so. Multiple programs that serve Wisconsin and the nation will sunset (funds will end) if a Farm Bill or responsible provisions for an extension do not pass by September 30. The drought assistance offered in the recent House disaster bill would be entirely paid for by cutting funds from the Conservation Stewardship Program and the EQIP program. Such cuts are profoundly short-sighted, as these important conservation programs help farmers be more resilient against the increasing and different kinds of extreme weather (droughts, floods, severe storms, unseasonable freezes, etc.) that are likely to continue to occur under global climate change.

John Koepke: The dry weather has impacted the condition of crops in his area; crops planted earlier in the summer are the most negatively impacted. Irrigated crops look great, but will produce huge electric bills. With the combination of an early spring and the use of irrigation systems, forage tonnages will be close to normal. The fourth crop alfalfa was being harvested the beginning of August, which is one month ahead of schedule. The dry weather does help produce high quality corn silage. Three weeks ago today, Koepke lost his 18 year old cousin to an automobile accident.

Andy Diercks: Diercks offered his thoughts and prayers to John Koepke and his family. Weather in his area is extremely dry, and irrigation systems are being used. Crops are two weeks ahead of schedule under irrigation systems, but the quality of potatoes will suffer due to heat. Harvesting has started and will continue through next month. Diercks participated in water tours last month that focused on quality and quantity issues in the central sands area. Recently in Colorado, the mountain pine beetle has had devastating impacts on pine trees.

Dick Cates: Cates expressed his condolences to John Koepke and his family. Although the weather has been dry, it's not the worst of conditions. In 1936, farmers had to cut trees to feed leaves to the animals. Former DATCP employee Will Hughes won the high pledge award for the Ride to Farm Bicycle Ride. The ride raises awareness and funds for the Wisconsin School for Beginning Dairy and Livestock Farmers. The 4th Annual Barn Dance will take place on September 22 in Manitowoc, and proceeds will benefit conserving farmland and natural resources. Cates thanked Secretary Brancel for the clarification of intention for the Dairy 30x20 Program, which many farmers and beginning farmers had misunderstood the purpose.

Mike Dummer: There are very dry conditions in west-central Wisconsin. Guys on the farm and many other farmers in his area have been putting in long hours to keep the irrigation systems up and running and changing tires on center pivots. The very small differences in management practices this spring made a huge difference this summer, including no-till, which preserved moisture in the soil. The grain elevator in Arcadia is expanding and undergoing a complete upgrade on the grain handling system, which will speed up handling of corn and beans.

Miranda Leis: Many projects at Organic Valley are underway. The dry conditions do not impact organic farmers differently and soil studies on different management practices will be conducted. The Board will meet at Organic Valley in September and an agenda is being developed. With less than 2 inches of rain in the area since July, much of the corn crop may not be worth chopping for foliage. The fourth crop of alfalfa is being harvested now. The Monroe County Fair took place in July, in which her kids showed animals. Leis expressed her frustration over the inaction of the Farm Bill.

Enrique Figueroa: Figueroa expressed his condolences to John Koepke. Figueroa spent time traveling with his son, and corn in Illinois looks very poor. The University of Wisconsin-Milwaukee has a group that will determine the need for an urban agriculture degree. The Cranberry Marketing Committee, in which Figueroa is a member of the board of directors, is scheduled to meet in two weeks in Milwaukee.

Secretary's Report

Secretary Brancel commented on the following issues:

Drought and Available Assistance

Every farm is impacted, although differently, when there is no rain. The Governor's cabinet members have held multiple discussions on the drought and obtaining help for those impacted. USDA has released Conservation Reserve Program Lands for haying and grazing purposes. The Farm Service Agency has an emergency loan program, federal crop insurance program and environmental quality incentive program (EQIP) available through local farm service offices. The Department of Natural Resources (DNR) is allowing haying and grazing on DNR land through negotiations with property managers and expediting waterway and wetland permit applications.

The department has been issuing notices and encouraging farmers to talk to their bank or financial advisors immediately. If farmers are involved in contracts, it is important they talk early of potential problems with those involved. The department's farm center has been referring multiple phone calls to the University of Wisconsin Extension, Farmer-to-Farmer Program, which is now designed to help farmers relocate animals for grazing. Potato and vegetable growers with irrigation systems are providing additional acreage that could be used for producing foliage (there may be 25-35 thousand acres available). Insurance companies have been given notice on how vital it is to get appraisers out to the farms quickly.

Ethanol

Subsidies for ethanol are gone. The issue of blending fuels and raising the required blending rate up from 10 percent is a continued debate. In order to have investment in the industry, there must be consistency. Two ethanol plants are closing in Wisconsin, one of which is for dried distiller's grain where 40% of the corn is made into a feed source. Ethanol plants will be forced to shut down if corn prices get too high.

State Fair

This year, the state fair attendance exceeded 100,000 people each of the first three nights and broke record attendance the first Sunday of the fair. The department has a building on state fair grounds and exhibits were represented by all divisions, presenting a great opportunity to interact with the general public.

Vincent High School in Milwaukee

Secretary Brancel toured Vincent High School (VHS) in Milwaukee. VHS received a grant to start an agriculture program in which 20 students have been involved during the summer. The program has brought focus onto landscaping, aquaculture, aquaponics and recycling.

World Dairy Expo

A record amount of attendees are expected at the World Dairy Exposition. The department has been in contact, and working with, a large number of international groups. This is a very exciting time and great opportunity for the department's international team. The Columbians intend to bring 200 individuals to tour Wisconsin and attend the exposition and China intends to attend with purchasing agents and the Hunan Deputy Secretary of Agriculture (a province of 100 million people).

Exports

During the first six months, exports are up in Wisconsin five percent. Wisconsin is now the 14th largest exporting state in the United States as it relates to agricultural products. Canada is Wisconsin's number one exporting partner. There has been a loss in export volume to Mexico, which is beginning to turn around. Ethanol, miscellaneous foods, commodities, fur skins and raw hides are the top export product areas.

Scheduling and Future Agenda Items

The Board of Agriculture, Trade and Consumer Protection will meet on September 12 at Organic Valley Farms in LaFarge.

A request for the department's position on the ethanol mandate was made for a future meeting.

Adjournment

By unanimous consent, the Board adjourned at approximately 3:05 p.m.

Andy Diercks, Board Chair

Enrique Figueroa, Secretary